

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
LANCE GREEN,  
  
Defendant.

Case No.: CR 12-0407 CW (KAW)  
  
REPORT AND RECOMMENDATION  
REGARDING GUILTY PLEA

Magistrate Judge Kandis A. Westmore recommends that the district judge accept Defendant Lance Green's guilty plea entered in open court on January 15, 2013. Specifically, Defendant pleaded guilty pursuant to a written plea agreement to Counts Two and Three of the indictment, charging Defendant with conspiracy to commit robbery affecting interstate commerce, in violation of 18 U.S.C. § 1915(a), and possessing a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(c).<sup>1</sup> The magistrate judge makes the following findings:

1. On the hearing date set forth above, with the assistance of counsel, the defendant waived his right to enter his guilty plea before a district judge and instead consented to enter his plea in a hearing in magistrate court. Specifically, the magistrate judge advised him that he had a right to plead guilty in district court, and that he could waive that right and consent to enter his plea in a plea hearing in magistrate court. The magistrate judge also advised him that she would issue a written report recommending that the district judge accept the guilty plea, that the district judge would review that recommendation and determine whether to accept the guilty plea, and

<sup>1</sup> The plea agreement states on the first page that Count Three is "in violation of 18 U.S.C. §§ 924(c) and 2." The rest of the plea agreement does not address § 2, and § 2 is not listed on the indictment.

1 that the district judge and not the magistrate judge would sentence him. The magistrate judge also  
2 advised him of the procedures (also set forth at the end of this recommendation) for challenging  
3 the magistrate judge's recommendation. The defendant then waived his right to proceed in district  
4 court in open court and in writing and consented to the magistrate judge's conducting the plea  
5 hearing.

6 2. The magistrate judge conducted a full plea hearing in the manner set forth in Federal  
7 Rule of Criminal Procedure 11. In particular, the magistrate judge reviewed, and the defendant  
8 acknowledged that he understood, the following: (a) the nature of each charge and the maximum  
9 penalties, as set forth in Fed. R. Crim. P. 11(b)(1) (G)-(L); (b) the effect of the advisory  
10 Sentencing Guidelines and 18 U.S.C. § 3553(a), *see* Fed. R. Crim. P. 11(b)(1)(M); and (c) the  
11 rights he was waiving by pleading guilty, *see* Fed. R. Crim. P. 11(b)(1) (A)-(F). The court  
12 reviewed the specific provisions of the plea agreement regarding waiving the right to appeal or  
13 collaterally attack the sentence. *See* Fed. R. Crim. P. 11(b)(1)(N). The magistrate judge also  
14 determined that there was a factual basis for the guilty plea. *See* Fed. R. Crim. P. 11(b)(3).

15 3. The plea agreement itself was disclosed in open court, *see* Fed. R. Crim. P. 11(c)(2),  
16 and the magistrate judge advised the defendant as follows:

17 A. The plea agreement was made pursuant to Rule 11(c)(1)(A). This means that if you  
18 plead guilty, the attorney for the government will not bring, or will move to  
19 dismiss, other charges, the district judge may accept the agreement, reject the  
20 agreement, or defer a decision until the district judge has reviewed the presentence  
21 report. To the extent that the district judge accepts the agreement, the agreed  
22 disposition will be reflected in the judgment. If the district judge rejects the  
23 provisions of the type specified in Rule 11(c)(1)(A), the judge will give you an  
24 opportunity to withdraw the plea. If the district judge rejects the plea agreement  
25 and you do not withdraw your plea, then the court may impose a more severe  
26 sentence without being bound by the plea agreement.

27 B. The plea agreement was also made pursuant to Rule 11(c)(1)(B). This means that  
28 the Government agrees not to oppose your request that a particular sentence or  
sentencing range is appropriate or that a particular provision of the sentencing  
guidelines does or does not apply. In your plea agreement, the Government agrees  
to recommend the guideline calculations set forth, unless you violate the terms of  
the agreement or fail to accept responsibility. The terms of the plea agreement are  
merely sentencing recommendations to the court, and the district judge may reject  
the recommendations without permitting you to withdraw your plea of guilty, and

1 may impose a sentence that is more severe without being bound by the plea  
2 agreement.

3 *See also* Fed. R. Crim. P. 11 (c)(3)-(5).

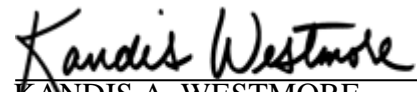
4 4. The magistrate judge also addressed the defendant personally in open court, and  
5 determined that the plea was voluntary and did not result from force, threats, or promises (other  
6 than the promises in the plea agreement). *See* Fed. R. Crim. P. 11(b)(2).

7 5. After the advisements set forth in Rule 11, and summarized here, the defendant  
8 pleaded guilty. The magistrate judge found that he was fully competent and capable of entering  
9 an informed plea, that he was aware of the nature of the charges and the consequences of the  
10 guilty plea, and that the guilty plea was knowing and voluntary and supported by an independent  
11 factual basis. This court thus recommends to the district judge that it accept the defendant's guilty  
12 plea.

13 6. Any party may serve and file specific written objections within fourteen days after  
14 being served with a copy of this order. *See* 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59. Failure to  
15 file objections within the specified time may waive a party's right to review. *See* Fed. R. Crim. P.  
16 59(b).

17 IT IS SO RECOMMENDED.

18 Dated: January 17, 2013

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20 KANDIS A. WESTMORE  
21 United States Magistrate Judge  
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